

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5795 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAMESH @ POLLIYO MANGALSINH PARMAR

Versus

COMMISSIONER OF POLICE

Appearance:

MR MUKESH D RAVAL for Petitioner

MR. NIGAM SHUKLA, Addl. G.P. for the respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 30/10/96

ORAL JUDGEMENT

This Special Civil Application is directed against the petitioner's detention order dated 26.4.1996 passed by the Police Commissioner, Ahmedabad City whereby the petitioner has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985. The detention order was executed on 26.4.1996 and since then the petitioner is under detention lodged at Surat Jail, Surat.

The present Special Civil Application was filed on 3.8.1996 and on 5.8.1996 rule returnable for 2.9.1996 was issued. So far neither any reply has been filed nor affidavit of the detaining authority has been filed.

The grounds of detention enclosed with the detention order show that two criminal cases were registered against the petitioner under the Bombay Prohibition Act with regard to country and foreign liquor. Out of two cases one was pending in the court and in other case police investigation was going on. There is yet another criminal case No. 451 of 1995 was pending trial before the court against the petitioner for offences under Section 324, 294-A and 114 of the I.P.C. and Section 135(1) of the Bombay Prohibition Act. The detaining authority having noticed the allegations pertaining to these cases has taken note of the statements of the witnesses with regard to the incidents dated 15.4.1996 and 18.4.1996. The petitioner has pressurised the witnesses to stock unauthorised liquor in the house of the witnesses and the other witness also stated that he was publicly beaten by the petitioner on the ground that this witness interfered with the petitioner's customers. The detaining authority has mentioned that the petitioner is a headstrong person and he along with his associate had engaged in anti-social activities and has been beating innocent people in the area. Out of his terror the witnesses are not prepared to disclose their identity and therefore privilege has been claimed under Section 9(2) of the PASA Act. The detaining authority has also noted that the proceedings of externment may not be sufficient to prevent the petitioner from carrying on his anti-social activities and accordingly the detention order has been passed.

The detention order has been challenged on more than one grounds but at the time of arguments the learned counsel kept his arguments confined to the question that the allegations and the material relied upon by the detaining authority against the petitioner did not constitute a case of breach of public order and at the most it could be said to be a case of breach of law and order only.

I have considered the submissions made on behalf of both the sides. In view of the reasons given in the decision dated 4.10.1996 of this court rendered in Special Civil Application No. 3879 of 1996, the allegations and material as have been relied upon in the

instant case even if taken to be true cannot be said to constitute a case of breach of public order. It is at the most a case of breach of law and order for which ground the detention order could not be passed. The case is fully covered by the decision dated 4.10.1996 mentioned above and the impugned order cannot be sustained in the eye of law.

Accordingly the Special Civil Application is allowed and the impugned detention order dated 26.4.1996 passed by the Police Commissioner, Ahmedabad City, is hereby quashed and set aside and the petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith if not required in any other case. Rule is made absolute.

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